Supreme Court, U. S.
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No. 77-1716

In the Supreme Court of the United States

OCTOBER TERM, 1977

HARRY NEIL KELLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the district court abused its discretion in denying his motion for a mid-trial continuance and that the evidence was insufficient to support the verdict.

After a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on two counts of causing a person to travel in interstate commerce in execution of a scheme to defraud, in violation of 18 U.S.C. 2314 and 2, and conspiracy to commit that offense, in violation of 18 U.S.C. 371. He was sentenced to a concurrent term of three years' imprisonment on each count. The court of appeals affirmed.

Contrary to Rule 23(1)(i) of the Rules of this Court, the petition for a writ of certiorari in this case does not include a copy of the opinion of the court of appeals. That opinion, which is reported at 569 F. 2d 928, contains a detailed summary of the evidence underlying petitioner's offenses and completely rebuts each of the claims presented in the petition. We rely on the court of appeals' opinion in urging that the petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1978.

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